

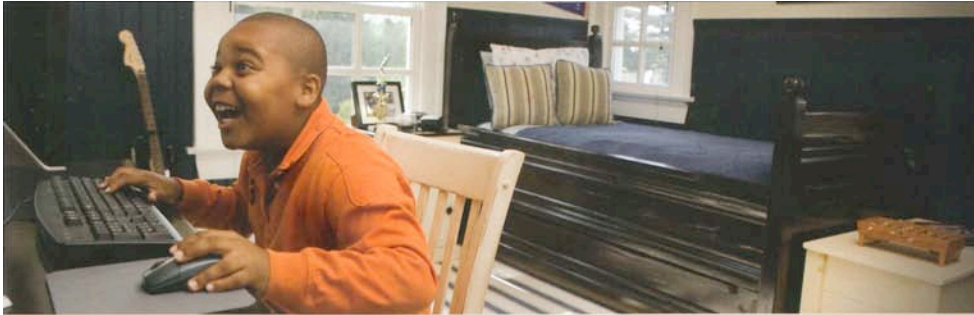
Appendix B – Misleading Marketing and Point-of-Sale Disclosures

In this appendix we offer several examples of misleading advertisements for wireline and wireless Internet access services and service bundles. Although these advertisements typically contain multiple examples of misleading information, we will focus on misleading statements regarding service performance and price. As we show, deceptive advertised speeds and service prices are present at all stages of service ordering – from marketing materials mailed to consumers’ homes, to print and television advertisements, and even during service ordering. In each of these stages, service providers do not offer true information about actual speeds or costs of service.


Internet access providers employ numerous tactics to hide hidden fees, actual service capacity, and usage restrictions. The examples of such tactics presented here are broken into two sections – first, marketing and advertising materials from print and television that sell the consumer on the service (Exhibits 1-5); and second, the online ordering process faced by consumers who decide to sign up (Exhibits 6 and 7). We offer screenshots of the key pages in the ordering process, analyzing the information presented and the information omitted.

As these examples demonstrate, at each stage of the customer acquisition process, the necessary information to enable meaningful consumer choice is misleading, confusing, or entirely absent. Consumers therefore may make incorrect choices, skewing the functionality of the market and trapping customers into lengthy service agreements with insufficient service and unexpectedly high bills. We urge the Commission to consider the real world examples below as evidence that meaningful disclosure rules are desperately needed.

Exhibit 1



The fastest fast is here.

 Comcast High-Speed Internet now has the fastest speeds out there. Sign up — and hold on.

Dear friend,

Here's good news for speed lovers: You're cleared for takeoff.

Comcast High-Speed Internet with PowerBoost® now offers speeds of 15, 20 and 30 Mbps. And now you can even get 50 Mbps with Extreme 50 from Comcast High-Speed Internet, so you can download HD movies, music, games, photos and more — even faster!

And when it comes to the Internet, who wants to wait? No matter whether you're into intense online gaming or just sharing photos with the grandkids, you can do it faster with Comcast.

Plus, Comcast High-Speed Internet comes with lots of valuable extras, including:

- McAfee® Security Suite — with parental controls, pop-up blocker, virus protection, personal firewall and spam filtering. A \$120 value, included.*
- 1 GB of online storage.
- 7 e-mail accounts.
- Share, store and transfer photos in a flash with the Comcast Photo Center powered by Snapfish. Order prints, too.

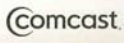
Sign up for Comcast High-Speed Internet now, with packages starting at

\$29.99
a month for 12 months.*

Blast!® from Comcast High-Speed Internet. Download at up to 20 Mbps — way, way faster than DSL. Plus, get all the valuable extra features.

Call now. (And hurry — this offer will be gone fast.)
1-800-COMCAST

Sincerely,
Comcast



Comcast sent out the above solicitation stating they now offer “speeds of 15, 20 and 30 Mbps” through “PowerBoost.” This assertion not only fails to explain PowerBoost — even though it does not even confer the stated theoretical speeds at all times — but also fails to include the “up to” qualifier, the minimal disclosure commonly present to indicate that real speeds may be substantially less. As this mailing is targeted to “speed lovers” — presumably people who make service judgments on the basis of actual speeds — such omission seems particularly troubling. The mailing also omits any mention of upstream speeds. Even those recipients alert enough to read find the fine print on the back are only offered the vague statement that “actual speeds vary and are not guaranteed.” Furthermore, the flyer plasters the promotional monthly base price in huge print, but fails to mention installation, activation or cable modem costs, nor what the price will go to following the first 12 months.

Exhibit 2

You won't believe your eyes – or your ears
GET READY!



Comcast Digital Starter delivers programming and features that will change the way you watch TV.

- Up to 100 of your favorite cable channels, including 45 Digital Music Channels.
- On Demand offers over 10,000 movies and programs, all ready to watch when you are.
- An INTERACTIVE PROGRAM GUIDE with parental controls.



Blast!® from Comcast High-Speed Internet offers speeds up to **20 Mbps** with PowerBoost®.

Comcast now delivers the fastest fast with speeds of 12, 16, 22 Mbps and up to 50 Mbps with Extreme 50!

Plus lots of valuable extras, including:

- McAfee® Security Suite – including parental controls and virus protection. A \$120 value, included.*
- 7 e-mail accounts and 1 GB of online storage.
- Share and store photos with the Comcast Photo Center powered by Shutterfly.



Comcast Digital Voice® Unlimited combines features, benefits and value that the phone company doesn't match. Compare what you're currently getting – and paying – and you'll see what we mean.

- Save over 25% over Verizon.
- Unlimited nationwide calling to the U.S., Puerto Rico and Canada – all for one low price.
- 12 Popular Calling Features like Caller ID, plus Voice Mail at no additional cost.
- Rated #1 in Call Clarity. So no word goes unheard.††



Six Flags is heart-pounding, high-flying speed.

Six Flags America features our triple threat: *Mind Eraser*, *Batwing* and *Superman: Ride of Steel* plus other fast and furious coasters. Use the lift lines and play all day long in Looney Tunes Movie Town with 10 rides just for them. Splashing good times in *Hurricane Harbor with Tornado*, *Hurricane Bay* wave pool and *Buccaneer Beach*, a dual pool just for the little tikes. Have more fun close to home at Six Flags America. More Flags. More Fun. Six Flags! Check out our complete line up of exciting acts coming to Six Flags America this summer as part of the **STARBURST® Summer Concert Series**. Go to sixflags.com for more information.



Choose the offer that's right for you!

Comcast Digital Starter and Blast® from Comcast High-Speed Internet

\$69⁹⁹
for only per month for 12 months!*

Comcast Digital Starter and Comcast Digital Voice® Unlimited

\$69⁹⁹
for only per month for 12 months!*

Digital Starter, Blast® from Comcast High-Speed Internet and Digital Voice® Unlimited

\$99⁹⁹
for only per month for 12 months!*

Plus sign up today and get 2 FREE tickets to Six Flags America†
Courtesy of Comcast

1-888-COMCAST





Similar to Exhibit 1, Comcast fails to offer an up to qualifier when stating “Comcast now delivers the fastest fast with speeds of 12, 16, 22 Mbps and up to 50 Mbps with Extreme 50!” The advertisement similarly fails to offer a visible explanation of PowerBoost, and places the numerical speed in bold while “up to” and “with PowerBoost” receive no such treatment. The lack of emphasis on even the vague and inadequate “up to” qualifier extends to television advertisements as well.¹

¹ One Comcast commercial (at 22 seconds) displays “> Twice as fast as DSL” while saying “with speeds up to twice as fast as DSL”. [emphasis added]
<http://www.youtube.com/watch?v=cOGv9SozBK8> (accessed Oct. 12, 2009).

Exhibit 3

POWER IS BLAZING-FAST ACCESS



We depend on the Internet more and more every day as our to-do lists continue to grow longer and our lives become more demanding. So we need speeds that allow us to fulfill all of our online needs in seconds, not minutes or hours. That's why **Road Runner High Speed Online™** delivers incredibly fast speeds that blow away standard DSL and sluggish dial-up. Banking transactions can be completed in seconds. Music, photos and videos can be downloaded faster than ever before. Thousands of online stores are at your fingertips, allowing you to browse, compare and purchase in no time. When you need unmatched speeds and a reliable connection from a service provider you can trust, Road Runner High Speed Online™ from Time Warner Cable is there.

- Download songs, photos and video clips in seconds with **speeds up to 5Mbps—that's 3x faster than DSL and 100x faster than dial-up**—and unlike DSL, your speed stays the same, no matter where you live!
- Road Runner's free security package is the ultimate in protection—say goodbye to viruses and pop-ups, control what your kids do online and stay up-to-date with the latest software upgrades.
- Enjoy an always-on, reliable connection that will never tie up your phone.
- Free 24/7 customer service is available anytime you need it.
- Each member of your family enjoys access to exclusive content including:
 - Road Runner Radio – Enjoy your favorite music anytime with 52 channels of CD-quality music—it's only a click away!
 - PhotoShow...Deluxe – Manage, edit, store and share your digital pictures.
 - Make rr.com your homepage and enjoy access to its various features, content sites and personalization tools at the click of your mouse—customize your homepage according to what matters most to you!

www.timewarnercable.com

DSL speed comparison is based on Road Runner's standard minimum download speed versus DSL's 1.5Mbps standard package maximum download speed. Actual speeds may vary. Dial-up speed comparisons are based on average download speeds of 56k and 52k modems. © 2000 Time Warner Cable. All Rights Reserved. Route, the leader in Digital Media Services.

DID YOU KNOW?

Road Runner was introduced at 2Mbps. Since then, we've increased the speed **TWICE!** Road Runner keeps getting faster and faster—to meet the needs of your daily demands.

▶ **SPEED 2Mbps**

▶ **SPEED 3Mbps**

▶ **SPEED 5Mbps TODAY!**



Turbocharge your speed with Road Runner Turbo

If your online time is spent gaming or downloading pictures and videos, or you just want the fastest speed available, **Road Runner Turbo** is for you. With speeds up to **10Mbps**, it's twice as fast as our already blazing-fast standard Road Runner! Road Runner Turbo gives you the speed you need when downloading large files, so you can do everything faster. It's time to kick it into high gear. With Road Runner Turbo, time is yours. Reclaim it!

PowerBoost® has been added for Road Runner Turbo customers!

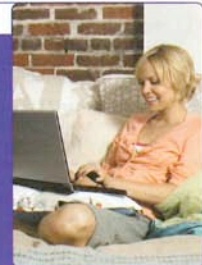
Now Road Runner Turbo customers can enjoy an instant burst of speed with new **PowerBoost®** technology. PowerBoost® is a network technology that provides a temporary burst of speed that is significantly faster than our standard Road Runner Turbo speeds—up to 16Mbps!

Upgrade to **Road Runner Turbo** and rev up to 10Mbps for only \$9.95 more!
For more information, call 1-866-625-5018.

NEW AND IMPROVED!

Try out these hot new enhancements to Road Runner High Speed Online™:

- Enjoy easier interaction on rr.com with the reinvented portal. With new page layouts, easy navigation, faster load times and new elements, surfing has never been easier or more enjoyable. Get enhanced webmail when you check your e-mail away from home. Also check out the new content rr.com has to offer, including local news, sports, radio, weather, maps, horoscopes and stocks!
- More e-mail accounts and storage space for the ultimate experience:
 - Road Runner Standard** = 10 Mailboxes (50% more) and 2 GB total storage space
 - Road Runner Turbo** = 25 Mailboxes (40% more) and 5 GB total storage space



Not all services available in all areas.

This solicitation from Time Warner Cable heavily emphasizes advertised maximum speeds. The advertisement fails to include the “up to” qualifier, much less any realistic statement of service speeds. The flier also states “unlike DSL, your speed stays the same, no matter where you live.” This is extremely misleading, as the (very) fine print on the lower left states “actual speeds may vary.” Separately, the fine print in Time Warner Cable’s Subscriber Agreement includes the provision: “I understand that the actual speeds I may experience at any time will vary based on a number of factors, including... network management tools and techniques employed by TWC.” This mailing portrays a grossly inaccurate picture of the limitations and restrictions on Time Warner Cable’s Internet access services.

Exhibit 4



A HIGH SPEED OFFER THAT'S MOVING FAST.

SPECIAL INTRODUCTORY OFFER

\$19⁹⁹

a month for the first 6 months, up to 3 Mbps

**OFFER EXPIRES
12/31/08**

Last chance to go faster.
This holiday season get faster Internet for only **\$19.99** a month for the first six months. Verizon High Speed Internet gives you speeds up to 3 Mbps at an amazing value. And when you're moving up to 55 times faster than 56 Kbps dial-up, you'll do it all quicker — from downloading purchased music and videos, to holiday shopping and exchanging the season's favorite photos.

Get more than just speed.
According to PC Magazine's 2008 Readers' survey, Verizon High Speed Internet beats the average cable provider in reliability.* That's because this isn't just about speed, it's about a better online experience — from setup to surfing:

- **Easy 3-step installation — so you're up and running in no time**
- **A dedicated line from our central office to your home — so even if your neighbors are online, it won't slow you down**
- **All the reliability of the Network**
- **24/7 technical support that's just a phone call away**
- **It's the best value in broadband**

To go fast you need to move fast — offer ends 12/31/08.
December 31, 2008 is your last opportunity to get Verizon High Speed Internet at 3 Mbps for only **\$19.99** a month (plus taxes and fees) for the first six months, \$31.99 a month for months 7–12, with a one-year agreement (plus taxes and fees). Verizon High Speed Internet is provided over the Network that gives you more.

Offer ends soon so don't wait.
CALL 1.866.905.6296 (Mon.–Sun., 7am–12am ET)



verizon.com/hotoffer19 **It's the Network**


SUC-5568
Offer valid through 12/31/08. For new serviceable Verizon High Speed Internet customers only. Verizon network service. Rates may change after first year. \$79 early termination fee. One-time charge of up to \$55. Other charges and terms apply. Service availability and speeds may vary. ©2008 Verizon.

In this mailing, Verizon trumpets a price of \$19.99 for DSL Internet access service. Only the fine print in the last section reveals that a one-year agreement is required, and that the price increases substantially following the first six months of service. Fine print is also used to disclose while effectively hiding a one time charge of “up to \$55,” and mandatory subscription to Verizon telephone service, in order to receive the service at the advertised base price.

Exhibit 5

Fast. Small.


The nation's fastest 3G network now powers the smallest netbooks.



NEW! ACER
ASPIRE ONE NETBOOK

\$199.99 AFTER MAIL-IN REBATE
Pay \$299.99 for device and after mail-in rebate receive \$100 AT&T Promotion Card.
2-year service agreement on qualifying DataConnect Plan required.

AT&T Promotion Card valid for 120 days wherever major credit cards accepted. May be used to pay wireless bill. Not redeemable for cash and cannot be used at ATMs or gas pumps.



at&t
Your world. Unleashed.

FREE SHIPPING | 1.866.MOBILITY | ATT.COM/NETBOOKS | VISIT A STORE


*AT&T imposes a Regulatory Cost Recovery Charge of up to \$1.25 to help defray costs incurred in complying with obligations and charges imposed by State and Federal telecom regulations; State and Federal Universal Service charges; and surcharges for government assessments on AT&T. These fees are not taxes or government-required charges.

3G not available in all areas. Coverage is not available in all areas. See coverage map at stores for details. **Limited-time offer.** Other conditions & restrictions apply. See contract, rate plan brochure, and rebate form at store for details. Subscriber must live & have a mailing add'l within AT&T's owned wireless network coverage area. Up to \$36 activ. fee applies. Equipment price & avail may vary by mkt & may not be available from independent retailers. **Early Termination Fee:** None if cancelled in the first 30 days, but a restocking fee up to \$35 may apply; thereafter up to \$175. Some agents impose add'l fees. **Offnet Usage:** If your mins of use (including unld svcs) on other carriers' networks ("offnet usage") during any two consecutive months exceed your offnet usage allowance, AT&T may at its option terminate your svc, deny your cont'd use of other carriers' coverage, or change your plan to one imposing usage charges for offnet usage. Your offnet usage allowance is equal to the lesser of 750 mins or 40% of the Anytime mins incl'd with your plan (data offnet usage allowance is the lesser of 6 MB or 20% of the KB incl'd with your plan). **AT&T Promotion Card:** Allow 60 days for fulfillment. You must be a customer for 30 consecutive days to receive Promotion Card. Offer expires 11/30/09. **Sales Tax** calculated based on price of unactivated equipment. DataConnect Plan is not unlimited & substantial charges may be incurred if included allowance is exceeded. ©2009 AT&T Intellectual Property. Service provided by AT&T Mobility. All rights reserved. AT&T, the AT&T logo, and all other marks contained herein are trademarks of AT&T Intellectual Property and/or AT&T affiliated companies. All other marks contained herein are the property of their respective owners.

This print advertisement from AT&T suffers from numerous problems. First, the advertisement buries a wide variety of additional fees in the fine print, including an activation fee. The heavily displayed \$199.99 price tag requires a mail-in rebate for \$100 and a two-year data plan service agreement. Perhaps worst of all, the fine print reveals a “data allowance” or usage limit, a still-foreign concept for consumers using a personal computer online and one that should not be hidden. These limitations are also not mentioned during AT&T’s television advertisements.²

² See e.g. http://www.youtube.com/watch?v=xsifyM_72NI or http://www.youtube.com/watch?v=iv3AbLU_o6U (accessed Oct. 12, 2009).

Exhibit 6



English Your location: 20051 [Reset](#)

Search Comcast.com

1 Products

2 Customize

3 Customer Info

4 Installation

5 Review & Submit

Faster Internet

Better TV

Smarter Phone

Bundles

Questions? Call 1-877-870-4310.

Performance

Downloads up to 12Mbps, uploads up to 2Mbps with PowerBoost®
The perfect upgrade from DSL.
Surf the net, download music, upload photos and chat with friends faster than ever before.
Comprehensive security tools.
SmartZone® Communications Center.
Access to Comcast.net.
7 e-mail accounts, each with 10GB of storage.
Offer limited to residential customers satisfying applicable eligibility criteria.

[Minimum System Requirements](#)
[Terms and Conditions](#)
[Learn More](#)

Special Comcast.com Price!
\$19.99
for the first 6 months
\$42.95 per month thereafter

[Remove from cart](#)

Economy Internet Service

Way faster than dial-up with downloads up to 1 Mbps and uploads up to 384 Kbps.
No dialing in required and no tying up the phone line.
Download speeds that are way faster than dial-up.
The highly-acclaimed, McAfee Security Suite—a \$120 value!
The SmartZone® Communications Center, which combines e-mail, Comcast voice mail and contacts into one convenient place online.
Seven e-mail accounts, each with 10GB of storage.
Access to Comcast.net to share photos, check e-mail and more.
This starting price is for customers who currently subscribe to Comcast Cable and/or Comcast Digital Voice service.

[Minimum System Requirements](#)
[Terms and Conditions](#)
[Learn More](#)

\$24.95 per month

[Add to my cart](#)

Performance

Downloads up to 12Mbps, uploads up to 2Mbps with PowerBoost®
The perfect upgrade from DSL.
Surf the net, download music, upload photos and chat with friends faster than ever before.
Comprehensive security tools.
SmartZone® Communications Center.
Access to Comcast.net.
7 e-mail accounts, each with 10GB of storage.
This starting price is for customers that currently subscribe to Comcast Cable or Comcast Digital Voice service.

[Minimum System Requirements](#)
[Terms and Conditions](#)
[Learn More](#)

\$42.95 per month

[Add to my cart](#)

Blast®

Downloads up to 16Mbps, uploads up to 2Mbps with PowerBoost®.
All the speed you need for downloading music and movies, and uploading photos and streaming video.
Comprehensive security tools.
SmartZone® Communications Center.
Access to Comcast.net.
7 e-mail accounts, each with 10GB of storage.
This starting price is for customers that currently subscribe to Comcast Cable or Comcast Digital Voice service.

[Minimum System Requirements](#)
[Terms and Conditions](#)
[Learn More](#)

\$52.95 per month

[Add to my cart](#)

Shopping Cart

	Monthly Fees
HIGH-SPEED INTERNET	
Performance Promo [Remove]	\$19.99
Total Monthly Fees	\$19.99

Prices do not include applicable taxes and fees.

[Next](#)

Current Comcast Customers
Add new products or upgrade existing products. It's easy and convenient.

[LEARN MORE](#)

More About High-Speed Internet
[Protection with McAfee Security Suite](#)
[Easy self-installation](#)

During the online ordering process, Comcast offers “up to” speeds for both download and upload. At no point in the ordering process are consumers told (or even, can they actively find) the actual speeds they might expect to receive. Furthermore, the “terms and conditions” pertains only to the promotion. Thus, consumers are not afforded an opportunity to learn of the vague and overbroad rights to monitor and interfere with Internet use and communications reserved by Comcast.

Exhibit 7

The screenshot shows a web browser window with the URL <http://order.timewarnercable.com/OfferConfiguration.aspx?act=ao#>. The page is titled "Order All Your Time Warner Cable Services Online" and features a navigation bar with "Configure Services", "Schedule Installation", and "Set Up Account". The main content area is for "High Speed Online" service setup. It includes a "Speed and Options" section with two choices: "Road Runner Turbo (up to 22 Mbps) with PowerBoost™" for \$44.90 monthly (selected) and "Road Runner Standard (up to 10 Mbps)" for \$9.95 less. A "Connections and Outlets" section asks if the computer is within 6 feet of a cable outlet, with "Yes" selected. A "Your Order" summary table shows the selected service and its price. On the right, there are links for "Chat Online", "Have Us Call You", and "Helpful Hints".

TIME WARNER CABLE
THE POWER OF YOU™

Order All Your Time Warner Cable Services Online

Configure Services Schedule Installation Set Up Account

High Speed Online

Set Up Your Internet Service
Configure your High Speed Online service.

Speed and Options

Choose Your Speed
Choose the speed that's right for you. View our [comparison chart](#) to help you decide.

☒ Road Runner Turbo (up to 22 Mbps) with PowerBoost™ \$44.90 monthly

☐ Road Runner Standard (up to 10 Mbps) Subtract \$9.95

Connections and Outlets

Is your computer within 6 feet of a [cable outlet](#)?

☒ Yes

☐ No

Back Continue

Chat Online >
Get help with your order right away.

Have Us Call You >
Please provide your phone number, and a representative will get right back to you.

Helpful Hints

- > What is Turbo with Powerboost™ ?
- > How do I decide what speed I want or need?
- > How do I change the speed in my cart?
- > How do I get wireless internet?

Your Order

Monthly Charges	
High Speed Online	\$44.90
• Road Runner Turbo (up to 22 Mbps) with PowerBoost™	\$44.90

As with other service providers, during the online ordering process Time Warner Cable fails to disclose any information on realistic speed expectations for its services. But Time Warner Cable goes even further, disclosing only the maximum PowerBoost speed for some of its services. Prospective customers are therefore left in the dark as to even the theoretical capacity of sustained use of the Internet access service, in a hypothetical environment without any congestion – much less what service speeds they should expect. And as with Comcast, Time Warner Cable hides their terms of service (note, the screenshot above does not contain any link that appears to indicate any terms of use), and certainly makes no effort to help consumers understand any restrictions or limitations to the Internet access service.